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By ECF

The Honorable Joan M. Azrack
United States District Judge
Eastern District of New York
100 Federal Plaza,
Central Islip, New York 11722

Re: United States v. Ajay Sharma
Case No.: 19-Cr-00024-JMA-AKT-1

Dear Judge Azrack:

We represent Ajay Sharma, the defendant in the above-referenced action. We write regarding our previously filed a petition, pursuant to 18 U.S.C. § 3582(c)(1)(A)(i), to modify his 78-month sentence and immediately release him to the United States Immigration and Customs Enforcement Agency, so that he can be deported to India – his country of origin – to provide needed care for his children, who are living without the requisite assistance of their disabled mother. *See*, ECF No. 154. On December 21, 2022, following the Government’s Reply to our initial Petition, the Defendant filed a Reply Letter, according to the Court’s Order. *See*, ECF No. 163. The defense eagerly awaits a response from the Court and remains available to provide any additional information that may assist the Court. We write today to provide a brief update regarding the application of First Step Act (“FSA”) credits to prisoners with detainers.

First, the BOP last week reversed course on its efforts to deny prisoners with detainers from their ability to reduce their sentence lengths by using FSA credits. In a supplement to their November 2022 program statement, the BOP issued an update deleting the requirement that inmates must have no detainer, or unresolved immigration status, in order to use FSA credits to shorten their sentences. *See*, P.S. 5410.01, February 6, 2023. This announcement wipes out the bar for most prisoners with detainers, like Mr. Sharma, from using FSA credits to reduce their sentence. However, they are continuing to prevent inmates who have a “final order of removal” from utilizing such credits. This comes on the heels of several district courts granting of *habeas corpus* petitions filed by prisoners denied the use of FSA credits because they had detainers. *See*, *Jones v. Engleman*, 22-CV-5292, U.S. Dist. Lexis 185029 (C.D. Cal. October 7, 2022); *Moody v. Gubbiotti*, 21-CV-12004, U.S. Dist. Lexis 181399 (D. N.J. October 3, 2022); *Sierra v. Jacques*,

22-CV-1509, U.S. Dist. Lexis 234525 (W.D. Wash. December 27, 2022). In *Engleman*, the Court rejected the BOP's refusal to apply earned-time credits to early release because he had a detainer.

Importantly, Mr. Sharma is currently not earning the benefit of these earned-time credits. His scheduled release date is January 24, 2024, less than a year from now. As we detailed in our initial Petition, were he receiving the benefit of such credits, he would have already been released to a halfway house or to home confinement. We continue to argue that Mr. Sharma's family circumstances, *taken together* with the Earned Time Credits (ETC's) that he would have earned under The First Step Act were he a United States Citizen, justifies using the Court's broad discretion under Section 3582(c)(1)(A), to grant the defendant's motion for release. Now, after several courts have held that detainers should not bar prisoners from applying these credits to shorten their sentences, we are continuing to ask the Court to utilize its broad discretion under Section 3582(c)(1)(A), to grant the defendant's motion and to release him to the United States Immigration and Customs Enforcement Agency.

Respectfully submitted,



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MTJ:dg

cc: AUSA Charles Kelly